



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
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**Jennifer Steel's January 13, 2023 Summary of  
(2010) Guidance for **Conservation Commissions** Implementing G.L. c.131, s.80A  
Threats from Beaver and Muskrat-Related Activities**

**Legal History.**

The Massachusetts Legislature amended G.L. c.131, s.80A, with the passage of "An Act Relative to Foothold Traps and Certain Other Devices." This new law became effective on July 21, 2000, and makes it easier for applicants to alleviate threats caused by beaver and muskrat-related flooding.

**Allowed Grievances.**

A "threat to human health and safety from beaver or muskrat-related activity.

1. Beaver occupancy of a public water supply
2. Beaver flooding of drinking water wells, pumping stations, sewage beds, septic systems, public or private ways, driveways, railways, electrical, gas, communication, or other public utility facilities
3. Beaver flooding of hospitals, nursing homes, fire stations, resource recovery facilities, etc.
4. Damage (e.g., gnawing) on electric or gas, transmission or distribution, cable, alarms, etc.
5. Beaver flooding or structural instability on the applicant's property, if it poses an imminent threat of substantial property damage or income loss of the following types: residential, commercial, industrial, commercial agricultural which the Board of Health, its chair or agent or the state or federal department of health has determined a threat to health and safety exists.

**Permitting Process.**

1. Any person may apply to the **Board of Health** for an emergency permit to immediately alleviate a threat to human health and safety caused by beavers.
  - a. To comport with the wetlands Emergency Certification language at 310 CMR 10.06(1), Boards of Health should not only authorize the remedial work, but should order that the work be done.
  - b. **Commissions** should not second-guess **Boards of Health** as to the existence of these threats.

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DEP on the World Wide Web: <http://www.state.ma.us/dep>

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- c. In many cases, applicants will seek their permits from the **Board of Health** prior to dealing with the **Conservation Commission**, and the **Commission** will then be forced to respond quickly. **Commissions** should therefore be prepared to respond to requests for Emergency Certification (310 CMR 10.06).
  - d. The applicant “in conjunction with the **Board of Health**” may apply to the DF&W for a 30-day extension permit.
2. If the **Board of Health** determines that such a threat exists, the **Board of Health** shall immediately issue an emergency permit to alleviate the threat. The permit is valid for ten days. The **Board of Health** permit authorizes the applicant to remedy the threat in one of three ways:
- a. use of conibear or box or cage-type traps (subject to Massachusetts Division of Fisheries and Wildlife (DF&W) but not **Conservation Commission** regulation)
  - b. breaching of dams subject to determinations and conditions of **Conservation Commissions**
  - c. use of any nonlethal management or water-flow devices, subject to determinations and conditions of **Conservation Commissions**

Beaver and muskrat-related problems that are determined by the **Board of Health** to not constitute threats to public health and safety under this new law may still be addressed with assistance and approval from DF&W pursuant to regulations at 321 CMR 2.08. Any permits issued by DF&W that allow an alteration to a wetland resource area, for either long term management purposes or beaver related problems that do not constitute a threat to public health, are still subject to the determinations and conditions of the **Conservation Commissions**.

3. Site visit. In order to properly condition the proposed work under either an Emergency Certification or Order of Conditions, **Commissions** should become familiar with the site.
4. Emergency Certification. DEP believes that Emergency Certifications can be used effectively provided the work authorized is limited to abating the immediate emergency and alleviating the specific beaver-related threat (e.g., handling short-term, limited measures, such as the installation of temporary or small water flow devices, or the authorization of a limited breach).
  - a. NOTE: Often, the applicant with a flooding problem is not the owner of the property upon which the dam is located. DEP has developed an Emergency Certification Form that may be used in these cases as well as other situations requiring emergency action.
  - b. The Request for Emergency Certification should include:
    - Description of the threat caused by beaver with as much specificity as possible
    - flood elevations, if known,
    - a general description of the frequency and duration of flooding
    - describe the work proposed to remedy the threat, including construction and maintenance methods,
    - the goal to be achieved (e.g. lower water level by 1 foot to elevation 36 to eliminate flooding of First Street at intersection with Beaver Brook).
    - predicted impact on water levels both up and downstream, and
    - a preliminary analysis of wetland interests that may be impacted.

- c. The **Conservation Commissions** must only allow the minimum necessary work to abate the immediate public health threat (e.g., allowing the breaching or removal of a small section of the top of the dam to drawdown the water in the pond up-gradient of the dam, or the installation of a water flow device).
  - d. The **Commission** should require/condition the activity to:
    - limit the alterations to the minimum necessary to abate the immediate public health threat
    - specify the size of the breach approved
    - safeguard the interests protected by the Wetlands Protection Act and regs up or downstream of the breach and control changes in hydrology
    - protect wildlife habitat
    - avoid sudden downstream flooding from the breached dam by requiring a gradual drawdown.
    - NOTE: Breaching is not recommended during the winter and spring months, when beaver kits are born.
  - e. Emergency Certifications to abate the immediate public health threat may be issued for up to 30 days.
  - f. Any additional alterations beyond that necessary to abate the immediate public health threat require a follow-up Notice of Intent filing.
  - g. Under an Emergency Certification, the **Conservation Commissions** retains the option of requesting an after-the-fact or follow-up Notice of Intent filing.
5. Notice of Intent. May be required to abate the immediate public health threat, for additional work beyond that authorized in an Emergency Certification, or for major projects such as full breaching of a well-established dam which will result in long-term impacts to established wetlands, proposals to alleviate beaver-related problems that are not threats to public health and safety, or longer term projects, such as those which exceed the time authorized by the **Board of Health** and require plans developed as part of the DF&W 30-day extension permit.
- a. NOIs require Wetlands Filing Fees.
    - Category 2 (water level variations - \$500) where water flow devices or very limited breaches are proposed.
    - Category 4 (dam, sluiceway, tidegate safety work - \$1450) for proposals that seek to dramatically alter and/or fully breach an existing dam.
  - b. The **Conservation Commissions** should require the same information listed above under Emergency Certifications **and** seek answers to the following questions to condition the proposed activities to safeguard the interests protected by the Wetlands Protection Act.
    - How long has the beaver dam been in existence, and what is its size and condition?
    - Has it recently been expanded or otherwise altered?
    - How well developed is the pond and/or wetland system behind the dam?
    - Is there evidence of recent water level increases?
    - What are conditions like downstream?
    - What is the potential for flooding or erosion with the proposed remedy?
    - What are the impacts on wildlife habitat, both upstream and downstream, of the proposed remedy?

- Would rare or endangered species be impacted?
  - Would a water-flow device or limited breach alleviate the immediate threat, without causing undue impacts?
  - An analysis of optimum water levels that would alleviate the immediate flooding problem while allowing the dam/pond/wetland system to remain essentially intact.
  - How will you prevent sudden flooding impacts from breached dams, address changes in hydrology, and minimize alterations to wildlife habitat located in wetland resource areas, including beaver habitat?
  - NOTE: refer to the DF&W guidance referenced above entitled “Issuing Breach Permits” and “The Use of Water Flow Devices in Addressing Flooding Problems Caused by Beavers in Massachusetts.”
- c. The **Commission** should require/condition the activity to:
- limit the alterations to the minimum necessary to abate the immediate public health threat
  - specify the size of the breach approved
  - safeguard the interests protected by the Wetlands Protection Act and regs up or downstream of the breach and control changes in hydrology
  - protect wildlife habitat
  - avoid sudden downstream flooding from the breached dam by requiring a gradual drawdown.
  - NOTE: Breaching is not recommended during the winter and spring months, when beaver kits are born.
6. Copies of the Emergency Certification:
- a. must be sent to the DEP Regional Office
  - b. should be sent to DF&W
  - c. Should be sent to the BOH

**Potential Solutions.**

1. Installation of water flow devices
  - a. A water flow device provides an effective long-term measure for controlling flooding
  - b. Ssee DF&W’s booklet entitled, “*The Use of Water Flow Devices in Addressing Flooding Problems Caused by Beaver in Massachusetts.*” Please note, though, that the permitting summary on page 3 is now out-of-date because of the new law.
2. The breaching of dam structures.
  - a. **Conservation Commissions** should adhere to the DF&W guidelines --“Issuing Breach Permits”
  - b. Breaching is not recommended during the winter and spring months, when beaver kits are born.